Sprint

January 24, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of The Merger of MCI Communications Corporation and British Telecommunications plc
GN Docket No. 96-245

Dear Mr. Caton:

Pursuant to the Commission's Public Notice (DA 96-2079) released December 10, 1996, Sprint Corporation ("Sprint") hereby respectfully submits a 3.5 inch diskette containing its comments in the above-referenced proceeding. If you have any questions, please contact the undersigned at 202-828-7438.

Sincerely,

Michael B. Fingerhut

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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The Merger of MCI Communications Corporation and British Telecommunications plc	)	GN Docket No. 96-245
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TO: The Commission

COMMENTS OF SPRINT CORPORATION

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Its Attorneys

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SUMMARY

Sprint takes no position on whether BT's acquisition of MCI would be in the public interest. Although economic theory teaches that additional entry or investment in the U.S. market by a dominant foreign carrier should produce competitive benefits, such entry or investment brings with it the risk that the dominant foreign carrier would exploit its market power in its home country to harm U.S. competition.

Where the public interest balance lies after weighing the competitive benefits against the dangers of discrimination rests on the facts of the particular case. BT's acquisition of MCI does not necessarily presage more competition or investment in the U.S. communications market. Also, with its acquisition of MCI, BT would have even a greater incentive to exploit its dominance in the U.K. market to harm MCI's U.S. competitors since BT will receive the full benefit of its anticompetitive actions. But, these facts do not necessarily compel a finding that the proposed merger is not in the public interest. The imposition of regulatory safeguards may serve to limit (although not totally prevent) the increased risk of discrimination here. Sprint takes no position whether the remaining problem of discrimination after the imposition of safeguards is outweighed by the claimed benefits of the transaction.

Nonetheless, the FCC cannot grant the Application on the basis that the U.K. market is *de facto* competitive. Although the

U.K. market may now be open *de jure,* the elimination of legal entry barriers does not, as even BT and MCI recognize, mean that such market is effectively competitive. In contrast to their arguments in other proceedings that the FCC must focus on *de facto* competition, the Applicants themselves would now have the FCC place primary emphasis on the U.K.'s lack of legal restrictions. The removal of *de jure* barriers can be considered in the Commission's public interest. But Sprint believes that the basic tests the Commission should use in weighing the risks and benefits of any application by a dominant foreign carrier seeking to enter or invest in the U.S. market are whether the degree of investment by the foreign carrier gives rise to an incentive to engage in anticompetitive discrimination against U.S. carriers and whether the Commission is able to adequately guard against the possibility of such discrimination through the imposition of safeguards. The Commission is ill-equipped in terms of resources and subject matter expertise to determine whether all *de facto* barriers to effective competition have been eliminated in a foreign country. Even the attempt gives rise to serious problems of comity.

Finally, the FCC needs to apply regulatory safeguards in a consistent manner to the wide variety of commercial relationships between U.S. and foreign carriers. Otherwise, the FCC risks one kind of discrimination (discrimination by a dominant foreign carrier) with discrimination of its own making.

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In the Matter of	)	
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The Merger of MCI Communications Corporation and British Telecommunications plc	)	GN Docket No. 96-245

COMMENTS OF SPRINT CORPORATION

Pursuant to the Commission's Public Notice (DA 96-2079) released December 10, 1996, Sprint Corporation ("Sprint") respectfully submits its comments on the request by MCI Corporation ("MCI") and British Telecommunications plc ("BT"), collectively Applicants, for Commission approval of the merger of BT and MCI and the resulting transfer of control of various licenses and authorizations held by MCI to BT.

Sprint takes no position on whether BT's acquisition of MCI would be in the public interest. However, if the Commission decides to grant BT/MCI's application here, it must, at a minimum, condition such approval by imposing a set of regulatory safeguards that seeks to prevent BT from exploiting its dominance in its U.K. market to discriminate against the U.S. carrier competitors of its MCI subsidiary.

Equally important, the Commission cannot approve this transaction on the grounds that the U.K. telecommunications market is *de facto* competitive. At most, the U.K. government has

opened its market *de jure*. But the market is not effectively competitive and BT remains dominant.

Moreover, the Commission must be mindful of the fact that the risk of harm to U.S. competition and the concomitant need for regulatory safeguards can arise in a wide variety of commercial relationships between U.S. and foreign carriers. Thus, the Commission needs to impose safeguards in a consistent manner to the various types of U.S. and foreign carrier associations that are developing in response to the increasing globalization of telecommunications. The application of appropriate safeguards to one type of relationship but not to others will itself skew U.S. competition by replacing discrimination by a foreign carrier with discrimination of the Commission's own making.

I. FOREIGN CARRIER ENTRY OR INVESTMENT IN THE U.S. TELECOMMUNICATIONS MARKET SHOULD GENERALLY BE ENCOURAGED.

The Commission has in recent years frequently been called upon to determine whether it is in the public interest to allow foreign carriers that are dominant in their home countries to either enter or invest in the U.S. telecommunications market. Some cases involved requests by foreign carriers for authority to provide international services between the U.S. and foreign markets, including their home markets, on either a resale or a

facilities basis.[1] Others have involved acquisitions by foreign carriers of non-controlling equity interests in major U.S. carriers.[2] And, in some cases, foreign and U.S. carriers have formed joint ventures to satisfy the growing customer demand for seamless international services.

As a matter of general economic theory, permitting foreign carriers to enter the U.S. telecommunications market directly or to invest in U.S. carriers through the purchase of non-controlling equity interests would ordinarily produce significant benefits even though such carriers may be dominant in their home markets. The investment is helpful to the U.S. economy, and additional entry should lead to innovative services and lower prices for U.S. consumers.[3]

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[1] *See, e.g., In Re Application of KDD America, Inc.,* 11 FCC Rcd. 11329 (1996) ("*KDD Order*"); *In Re Application of ITJ America, Inc., Order Authorization and Certificate,* DA 96-1782 (released October 29, 1996); and, *In the Matter of Telecom New Zealand Limited, Order, Authorization and Certificate,* DA 96-2182 (released December 31, 1996) ("*TNZL Order*").

[2] *See MCI Communications Inc./British Telecommunications, plc.,* 9 FCC Rcd 3960 (1994) ("*MCI/BT Order*") in which the Commission approved BT's acquisition of a 20 percent equity interest in MCI; *Sprint Corporation,* 11 FCC Rcd 1850 (1996) ("*Sprint Order*") in which the Commission approved the acquisition of 10 percent equity interests by France Télécom ("FT") and Duetsche Telekom ("DT") in Sprint.

[3] *See, e.g., TNZL Order* at ¶39 ("We believe that additional competition on [the U.S.-New Zealand] route will result in lower prices and enhanced service options for U.S. consumers"); *see* also *Sprint Order,* 11 FCC Rcd at 1863-1865, ¶¶78-88 discussing the procompetitive effects of the investment by FT and DT in Sprint and the value of the transaction to Sprint's competitive

Footnote continues on next page.

The extent of such competitive benefits depends, of course, on the particular case. BT's proposed acquisition of MCI does not necessarily presage additional competition in the U.S. telecommunications market. On the contrary, it appears that BT North America ("BTNA"), BT's current U.S. carrier subsidiary, will no longer compete in the provision of U.S. international services once the proposed merger is approved. *See* BT/MCI Merger Application, Vol. 1 at 17 n. 22. Moreover, BT's proposed acquisition will not necessarily bring additional capital beyond that available to MCI. BT has not yet committed to invest more capital in either MCI or the U.S. telecommunications market, and the proposed acquisition will not, in and of itself, provide MCI with immediate funding necessary to strengthen or perhaps expand its position in the U.S. telecommunication market. The transaction simply substitutes BT for MCI public shareholders.

Although there may be no immediate incremental infusion of funds by BT into MCI or the U.S. telecommunications market, the Applicants argue that the merged company will be able to devote significant additional resources to the U.S. telecommunications market and especially the U.S. local telephone market. Sprint has no reason to doubt that BT has the financial wherewithal to

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position in the domestic interexchange market (¶80); the terrestrial CMRS market (¶¶81-82); the U.S. international services market (¶83) and the market for global seamless services (¶¶84-87).

invest additional funds in the U.S. telecommunications market. And, it may well be that MCI's financial ability to invest in and compete in the local market will be enhanced if the acquisition is approved and MCI becomes a subsidiary of BT. Nevertheless, it remains significant that this case -- unlike the original BT/MCI transaction and the Sprint - FT/DT transaction -- does not involve (at least directly) a massive cash infusion into the U.S. telecommunications market or the U.S. economy in general.

II. BT'S ACQUISITION OF MCI RAISES CONCERNS ABOUT ANTICOMPETITIVE DISCRIMINATION.

Although, as stated, the entry or investment in the U.S. market by dominant foreign carriers should, in general, be welcomed, it is clearly not risk-free. The overarching danger presented by dominant foreign carriers seeking to participate in the U.S. market either through direct entry or through an affiliation with a U.S. carrier is that they will exploit their market power in their home markets to unlawfully discriminate against the rivals of their U.S. operations or affiliates.

Both the Commission and the Department of Justice have found that there is a possibility of anticompetitive discrimination in instances where the dominant foreign carrier simply acquires a non-controlling equity interest in a U.S. carrier. This finding led the Commission and the Department to impose conditions on

BT's original acquisition of 20 percent of MCI's stock.[4] Whatever possibility of discrimination existed at the time BT acquired its 20 percent interest in MCI is obviously increased once BT acquires MCI in its entirety. With complete ownership, BT will receive the full benefit of anticompetitive actions it may take against MCI's rivals in the U.S. market. Moreover, by combining MCI and BT's operating company in the U.K. into a vertically integrated firm, the ability of BT to shift costs between MCI and its U.K. subsidiary and engage in other anticompetitive activities is similarly enhanced. *Compare United States v. Western Electric and AT&T*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

III. REGULATORY SAFEGUARDS DESIGNED TO LIMIT THE DANGER THAT BT WOULD EXPLOIT ITS MARKET POWER TO DISCRIMINATE WILL HAVE TO BE ADOPTED IF THE COMMISSION APPROVES THE TRANSACTION.

As MCI recently acknowledged, BT's dominant position and its ability to wield substantial market power in the U.K. telecommunications market has continued unabated since its acquisition of 20 percent of MCI. MCI explained that BT exercises market power by virtue of the fact that it controls over 90 percent of local termination points in the U.K. and that

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[4] *MCI/BT Order*, 9 FCC Rcd at 3973, ¶¶60-71; *United States v. MCI et al.*, Case No. 1:94 CV01317 (D.D.C. filed June 15, 1994).

it operates the most fully developed long distance network in the U.K. As a practical matter, other carriers must interconnect with BT's network to carry international traffic. Comments of MCI filed September 6, 1996 in *BT North America Inc., Motion to be Reclassified as a Non-Dominant Carrier for US-UK Service*, File No. ISP-96-007-ND at 1-2, citing *BT North America, Inc.*, 10 FCC Rcd. 3204, 3205 (1995). MCI also pointed out that BT is still the dominant facilities-based international carrier in a U.K. government-prescribed duopoly. In December, 1996, the U.K. began to grant licenses to other carriers to provide facilities-based international telecommunications services in the U.K. market. Yet, as MCI stated, the fact that the U.K. changed its regulatory policies in this regard does not, standing alone, dissipate BT's market power in the U.K. international market. *Id.* at 3. *See* also *Motion of AT&T to be Declared Non-Dominant for International Service*, FCC 96-209 (released May 14, 1996) ("*AT&T International Nondominance Order*") at ¶90, where the Commission cited a February 1996 OFTEL Report finding that BT's U.K. "network is the most comprehensive, with an unparalleled degree of coverage"; that "BT has 94 percent of all residential exchange lines (by number)"; and that "BT remains dominant in basic retail services."

However, the fact that BT exercises substantial market power in the U.K. market does not mean that the Commission must deny BT's request to acquire MCI. As was the case with BT's previous

20 percent acquisition of MCI, the imposition of regulatory safeguards may serve to limit (although not totally prevent) the increased risk of anticompetitive discrimination presented by BT's acquisition of the remaining 80 percent of MCI. Such safeguards would have to prohibit any form of discrimination and require transparency in any dealings between BT and MCI so as to enhance the ability of regulators and competitors of the BT/MCI entity to detect any anticompetitive behavior. Sprint believes that the following conditions, at a minimum, are necessary to constrain the exercise of market power by BT:

- MCI must remain a separate entity from all other subsidiaries of its U.K. parent (to be named Concert) and must keep separate books and accounts. All agreements between MCI on the one hand, and Concert and all other subsidiaries of Concert, on the other, which affect traffic and revenue flows in the U.S. international market should be on an arms-length basis; should be reported to the Commission; should be made available for public inspection; and should be offered to all U.S. competitors of MCI.

- All confidential and proprietary information obtained by Concert or any of its subsidiaries from MCI's U.S. competitors, from the customers of MCI's competitors or from the customers of Concert and its subsidiaries in the course of regular business activities may not be disclosed to MCI or used by Concert or any of Concert's subsidiaries for marketing or other commercial purposes which could in any way benefit MCI's operations in the U.S. domestic and international markets or in the U.S.-U.K. market. Concert, on behalf of itself and its subsidiaries, must file with the Commission its plans for fulfilling this condition.[5]

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[5] Because it owns a Commission licensee, Concert is subject to the Commission's jurisdiction and can be required to provide whatever information is necessary for the Commission to carry out its duties under the Act. *See US West Inc. v. FCC, 778 F.2d 23, 26* (D.C. Cir. 1985); *North American Telecommunications Association v. FCC,* 772 F.2d 1282, 1291-93 (1985).

- Concert must file all information regarding the allocation, ownership, lease terms, installation and maintenance of all facilities in the eastern half of any transoceanic cable extending from the U.S. to the U.K. over which BT is the manager. Concert must file the same information with respect to cable head and dry side facilities in the U.K. over which BT has ownership control or management rights. Concert must certify that any *de jure* or *de facto* restrictions on the use of such cables or to access cable head and dry side facilities on the eastern end of the cable controlled by BT have been eliminated.

- Concert, on behalf of any of itself or any of its operating subsidiaries, must publish the details of all rates, terms and conditions for providing transiting, refile or hubbing services provided to MCI and must certify that it and its operating subsidiaries are willing to offer such rates, terms and conditions to any U.S. carrier.

- Concert's MCI subsidiary should be declared dominant in the provision of telecommunications services in the U.S.-U.K. market.

- To the extent not already included in the above, all conditions imposed by the F.C.C. and the Department of Justice in connection with BT's previous 20 percent acquisition of MCI (modified accordingly to reflect the new organizational structure of BT) should be retained including especially the proscription on the acceptance by MCI of any special concessions either directly or indirectly from Concert or any of its subsidiaries.

Most of these conditions have been imposed by the Commission in other proceedings dealing with foreign carrier entry or investment in the U.S. market in order to protect competition. *See, e.g., Sprint Order,* 11 FCC Rcd at 1868 ¶107 (declaring Sprint to be dominant on the U.S.-France and U.S.-German routes); *TNZL Order* at ¶42 (regulating TNZL as dominant) and ¶45 (requiring TNZL to publish rates for routing U.S. traffic through New Zealand to and from third countries). Others, *e.g.*, the

requirement for MCI to remain a separate entity from Concert's other subsidiaries and the prohibition on the use of confidential information of non-affiliated U.S. carriers obtained by Concert and its other subsidiaries to benefit MCI, are suggested by the special dangers entailed by the vertical integration of the dominant telecommunications provider in the U.K. and the second largest interexchange carrier in the United States. And, all of the requirements would appear to be necessary to protect competition by better enabling the Commission to detect, and perhaps deter, possible anticompetitive and discriminatory behavior.

It is especially important that the Commission ensure that BT not exploit its market power with respect to the TAT 12/13 cable system. As Sprint explained to the Commission in the *AT&T International Nondominance* proceeding, the TAT 12/13 cable has proven to be extremely attractive to customers since such cable will ultimately permit instantaneous self-restoration in the event of outages. Comments of Sprint filed January 11, 1996 at 34-35. It is Sprint's understanding that the cable is now close to being fully subscribed in large part due to the recent purchase by MCI of significant capacity, and that MCI and BT may now own close to 50 percent of the TAT 12/13 cable. Thus, some method will have to devised to allocate the remaining capacity among the subscribing carriers. But such allocation raises a substantial risk of discrimination. The Commission may need to

oversee the allocation process to guard against BT's exploitation of its market power in this fashion.

Notwithstanding the imposition of these conditions, the Commission should be mindful that there is no way that regulatory controls can prevent BT from acting on its natural incentive to exploit its dominant position in the U.K. market to enhance the competitive position of MCI in the U.S. market. No set of safeguards can accomplish that goal. Even with the adoption of the safeguards suggested above, the danger of discrimination will persist. The question the Commission must answer is whether the claimed benefits of the transaction sufficiently outweigh the remaining risks of discrimination and anticompetitive behavior so as to enable the Commission to find that the transaction is in the public interest. Sprint takes no position on this question.

IV. THE COMMISSION MUST CONSIDER BT'S DOMINANCE IN THE U.K. MARKET IN DETERMINING WHETHER GRANT OF THE APPLICATION IS CONSISTENT WITH THE PUBLIC INTEREST.

In determining the public interest balance -- that is, in determining whether the possible benefits of BT's acquisition of MCI will outweigh the increased risk of discrimination -- the Commission cannot rely for support on any notion that the U.K. market is workably competitive. The facts in this proceeding simply do not support such a finding. The most that can be said is that the U.K. has lifted the remaining *de jure* restrictions against competition in the international segment of its telecommunications market by granting, in the past few weeks,

international U.K. facilities-based licenses to U.S. and other non-U.K. carriers. BT/MCI Merger Application (Vol. 1) at 19. However, as BT and MCI have themselves argued, the absence of legal restrictions on the ability of carriers to enter a market does not mean that such market is effectively competitive.[6] The actions taken by U.K. regulatory authorities may, over time, allow effective competition in the U.K. market to develop, thereby dissipating BT's market power and reducing the risk of anticompetitive discrimination by BT against MCI's competitors. But, there is no way that the Commission can know how soon this will occur or even if it will occur at all.[7]

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[6] *See, e.g.,* September 1, 1995 Comments filed by BT's subsidiary BTNA in File No. ISP-95-002 at 6 (German and French markets must not merely be open to competition but such competition must be determined to be "fair"); MCI's September 1, 1995 Comments in File No. ISP-95-002 at 15 ("at least three years must pass beyond the initial liberalization of the French and German markets and the complete privatization of FT and DT must occur, before there possibly can be any assurance that FT and DT no longer have the ability to disadvantage Sprint's competitors."); MCI's Comments on BTNA Motion for Reclassification (File No. ISP-96-007-ND) at 3 (the removal of the *de jure* duopoly in the U.K. international market "does not make for effective competition."); and MCI's Petition to Deny filed November 15, 1996 in Telia North America, Inc. (File No. ITC 96-545) at 1 (Although the Swedish market has been liberalized, "it is not sufficiently open to facilities-based competition.").

[7] It is worth noting in this regard that the open market in the U.K. -- the most liberal in the world if the Applicants are to be believed (BT/MCI Merger Application (Vol. 1) at 14) -- lacks any provision for interconnection tariffs, for equal access, and for most of the other obligations thought necessary for competition and therefore mandated for dominant carriers in the U.S. by Congress in §251(c) of the 1996 Telecommunications Act.

The lack of effective competition in the U.K. market is suggested by the Applicants themselves. BT and MCI point out that BT's provision of local service and intercity services has been subject to competition from companies other than Mercury at least since 1991.[8] Yet, in the ensuing years, BT's market share losses to such rivals have been limited to a few percentage points. BT acknowledges that its "share of local telephone service remains over 90 percent." BT/MCI Merger Application (Vol. 1) at 28. In the U.K. intercity market, BT and its original duopoly "competitor" Mercury similarly retain over a 90 percent market share. *Id.* at 42.[9] And, as stated, BT and Mercury were until recently the only carriers authorized to provide U.K. facilities-based international services.

BT's substantial share of the U.K. telecommunications and the overwhelming combined share of BT and Mercury would suggest

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[8] Apparently, Mercury -- the U.K. subsidiary of Cable & Wireless plc -- was authorized by the British Government to provide local, intercity and international services in the U.K. market in 1986. BT/MCI Merger Application (Vol. 1) at 28. In 1991, cable companies were authorized to provide local services. Sprint did not receive authorization to enter the U.K. facilities-based local and inter-city market until October, 1993. Such license has been assigned to Global One which is the Sprint-DT-FT joint venture.

[9] By way of comparison, in the 6 years following the 1984 Bell System divestiture and the requirement for equal access, AT&T's market share of the U.S. interexchange market fell to 63.0 percent as measured in interstate minutes and 66.5 percent as measured in revenues. Source: *Long Distance Market Shares, Third Quarter 1996*, Industry Analysis Division, Common Carrier Bureau Federal Communications Commission (released January 15, 1997).

that, despite the removal of *de jure* barriers to entry, the opportunity to compete successfully in the U.K. market may not currently exist.[10] The Applicants' attempt to convince the Commission otherwise and to show burgeoning competition relies largely upon anecdotal evidence, such as newspaper reports of the entry plans of other carriers.[11]

As is the case with similar reports used by the Bell Operating Companies to assert that local competition is the U.S. market is "just around the corner," these reports are frequently exaggerated. The new entrants have a commercial need to publicize their efforts. However, even assuming such reports are wholly accurate, they tell us nothing more than that particular corporate or individual investors have sufficient confidence to invest in a newly opening market. They do not show that competition is workable; that it is sufficiently "enabled" to

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[10] *See Regulation of International Accounting Rates,* FCC 96-459 (released December 3, 1996) at ¶44 ("...we agree with AT&T and other commenters that there may be circumstances under which a foreign carrier with a significant share of its market may have the ability and incentive to misuse its market power to discriminate against U.S. carriers, notwithstanding the existence of effective competitive opportunities in the foreign market").

[11] *See, e.g.,* BT/MCI Merger Application (Vol. 1) at 31-32 (stating that according to an article in the *Financial Times,* the City of London Telecommunications Ltd. "is poised" to expand services to UK metropolitan centers and MFS is "actively looking" to expand its services); *id.* at 40-41 (discussing AT&T's intention, as reported in the *Financial Times* and *Wall Street Journal,* to provide a full range of services in the U.K. market).

succeed in the long run; or that it may be expected to soon begin to erode the dominant position of the former monopoly carrier.

The lack of significant competition is perhaps reflected by the Applicants' emphasis on the fact that there are no *de jure* barriers to entry by U.S. carriers into the U.K. market. *Id.* at 18-19. This emphasis is in marked contrast to earlier positions of BT and MCI which focused not on *de jure* openness, but rather on the *de facto* state of competition in the home market of the foreign applicant. BT and MCI have gone so far as to insist that the Commission review the reasonableness of regulatory decisions in countries whose carriers may be seeking either to enter the U.S. market or to purchase an equity stake in a U.S. carrier. For example, in the Sprint - FT/DT matter, they argued that the Commission must undertake an element-by-element review of the telecommunications market in France and Germany and pass judgment on the various measures taken by each country's regulatory authorities. They also insisted that the Commission tell the French and German Governments where changes needed to be made and they would then have the Commission evaluate the efficacy of those changes in promoting competition. *See* Comments of BTNA filed September 6, 1996 in File No. ISP-95-002 at 12-14, 16, 22, 24-25, 34-35, 37; Reply Comments of MCI filed September 23, 1996 at 1-2. As Sprint has previously explained, this "course is well outside the ambit of the Commission's jurisdiction and seems

inconceivable as a matter of comity." Reply Comments of Sprint filed September 23, 1996 in File No. ISP-95-002 at 8.

Sprint still holds this view. Although Sprint does not deny that the elimination of *de jure* barriers to entry into the home market of a dominant foreign carrier seeking to invest in or acquire a U.S. carrier can be considered in the Commission's determination of whether such investment or acquisition is in the public interest (*see* Applicants' argument at 18-19), entry should not be viewed as a reward to be given to foreign carriers of countries whose governments may have removed legal restrictions to entry regardless of the dangers such entry may have for U.S. competition.[12] Rather, the basic tests the Commission should use in weighing the risks and benefits of any application by a foreign carrier seeking to enter or invest in the U.S. market are whether the degree of investment by the foreign carrier gives rise to an incentive to engage in anticompetitive discrimination against U.S. carriers and whether the Commission is able to adequately guard against the possibility of such discrimination through the imposition of safeguards.

The Commission is ill-equipped in terms of resources and, even more important, subject matter expertise, to determine

[12] The U.S. Government's position in the current round of telecommunications negotiations at the WTO would allow for entry by any foreign carrier in the U.S. market as long as a critical mass of countries have committed to liberalizing their markets.

whether all *de facto* barriers to effective competition have been eliminated in the U.K. or any foreign country as a basis for deciding whether to approve entry by that country's dominant carrier into the U.S. telecommunications market. As the Commission's own experience in attempting to meet the procompetitive goals of Telecommunications Act of 1996 would suggest, the introduction of competition into monopoly or near-monopoly markets raises extremely complex issues and there is simply no way to determine with any degree of accuracy whether a particular decision or policy will fully "enable" new entrants to provide effective competitive alternatives to consumers. For the Commission to make a decision to allow or disallow BT's entry into the U.S. market by placing significant reliance on its understanding as to whether competition has been *de facto* "enabled" in the U.K. market makes no more sense than for OFTEL to decide on U.K. entry for U.S. carriers based on OFTEL's understanding as to whether the Telecommunications Act of 1996, and the Commission's implementation of such legislation, will effectively "enable" *de facto* competition in the U.S. local service market. Even the attempt to analyze the foreign regulatory regime and the appropriateness of the steps it has taken to promote competition gives rise to serious problems of comity.

Sprint recognizes that the so-called "Effective Competitive Opportunities" ("ECO") test, as currently administered, has led

the Commission to examine, and often inquire into, the policies and decisions by the government of the home country of a carrier seeking to enter the U.S. market in determining whether to allow such entry.[13] Sprint would respectfully suggest that, thus far, the enforcement of the ECO test has caused more uncertainty concerning standards for entry into the U.S. market than it has resolved, and even where entry by foreign carrier has been allowed, has given offense.[14] The Commission needs to carefully consider whether it wants to continue further down a path that -- and this is becoming increasing clear -- leads nowhere.

V. THE SAFEGUARDS AGAINST ANTICOMPETITIVE DISCRIMINATION ARISING FROM THE ASSOCIATIONS OF DOMINANT FOREIGN CARRIERS WITH U.S. CARRIERS MUST BE APPLIED IN A CONSISTENT MANNER.

The risk of harm to U.S. competition and the concomitant need for regulatory safeguards can arise in a wide variety of commercial relationships between U.S. and foreign carriers. In adopting conditions to cover the discrimination problems created by these differing situations, the Commission needs to be careful that the safeguards it imposes are adopted in a consistent manner. Absent such consistency, the Commission will simply be

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[13] *See, e.g., KDD Order* at 11340-11342 discussing Commission's concerns with the interconnection policies in Japan, and 11347-11349 discussing the Commission's concerns as to the regulatory structure in Japan.

[14] For example, Japan reacted to the Commission's KDD decision by asking the Commission to withdraw the Order.

exchanging one kind of discrimination (discrimination by a dominant foreign carrier) with discrimination of its own making.

The Commission appears to recognize the dangers to U.S. competition presented when a U.S. carrier enters into a commercial relationship with a monopoly and dominant foreign carrier which does not involve an equity investment in the U.S. carrier. Thus, the Commission has stated that AT&T's joint ventures with monopoly and dominant foreign carriers to provide seamless international services through AT&T's WorldPartners and Uniworld alliances give rise to "the potential for anticompetitive behavior," since "one reason for AT&T to pursue these alliances is to persuade its foreign partners to build a special relationship in the marketplace with AT&T." *AT&T International Nondominance Order* at ¶74. *See* also *Market Entry and Regulation of Foreign-affiliated Entities* (IB Docket No. 95-22), 11 FCC Rcd 3873, 3969 (¶253); Reply Comments of the Department of Justice in IB Docket No. 95-22 at 16-17 ("...in some circumstances it is possible for a relationship closely related to the core monopoly activities of a foreign carrier to give rise to anticompetitive problems without an equity investment"). Despite such recognition, the Commission has thus far refused to examine the nature and extent of AT&T's joint ventures or determine whether the public interest requires the imposition of conditions on AT&T's participation in these partnerships. Indeed, it has refused to regulate AT&T as

dominant in the provision of services between the United States and the home countries of the dominant WorldPartners or Uniworld carriers even though the record in the *AT&T International Nondominance* proceeding contains evidence that AT&T's foreign partners are discriminating in favor of AT&T and against other U.S. carriers. *See* Sprint's Comments filed January 11, 1996 at 26-30 and Sprint's Petition for Reconsideration filed June 13, 1996 at 7-12. Plainly, the Commission needs to impose safeguards to minimize such discriminatory actions.

Moreover, inconsistent regulatory treatment of equity investments by dominant foreign carriers in U.S. carriers can skew competition in the U.S. domestic and international markets. The increasing convergence of the long distance, local wireless and cable markets has created enormous capital requirements for all market participants. As the BT/MCI Application here makes clear, all U.S. carriers, with the possible exception of AT&T, the BOCs and GTE, need to raise foreign capital in order to have a reasonable chance of competing effectively in these markets. If the Commission allows some U.S. competitors to raise foreign capital under conditions that are more light-handed than others, the resulting inconsistency is likely to seriously harm U.S. competition. In particular, it would seem unfair at this point to apply dominant carrier regulation, a freeze, and more onerous reporting requirements to Sprint than to BT/MCI since BT will now own and control MCI in its entirety while FT and DT continue to